

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3087
Administrative Law Judge Division
May 2, 2002

R E S O L U T I O N

RESOLUTION ALJ 176-3087. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hkr

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

ALJ/hkr

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on May 2, 2002, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY
Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3087 (5/2/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-04-024 PACIFIC GAS AND ELECTRIC COMPANY, (U 39-M) for an Expedited Order authorizing it under Public Utilities Code Section 851 to grant an Easement to Alpine County for Realignment, Maintenance and Use of a Road on its Land and a License for a Temporary Construction Area on its Land	Ratesetting	Ratesetting	NO
A02-04-025 ACT TELECOM, INC.; for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-04-028 ECI COMMUNICATIONS, INC., dba ITS NETWORK SERVICES, for an Order Expanding the scope of its existing Certificate of Public Convenience and Necessity to include authority to provide: (i) Facilities-based competitive local exchange service throughout the service territories of Pacific Bell Telephone Company and Verizon California, Inc.; (ii) Both resold and facilities-based competitive local exchange service in the service territories of Roseville Telephone Company, and Citizens Telecommunications Company of California, Inc.; and (iii) Facilities-based Interexchange Service statewide	Ratesetting	Ratesetting	NO
A02-04-029 AIR-TRANSIT SHUTTLE, LLC, CHOVATIA, RAJEN R., dba AIR-TRANSIT SHUTTLE, to transfer his PSC- 10858 Certificate to Air-Transit Shuttle, LLC; and to Establish a Zone of Rate Freedom	Ratesetting	Ratesetting	NO
A02-04-031 PACIFIC GAS AND ELECTRIC COMPANY, (U 39-M), for Ex Parte Approval of the 2002 California Alternate Rates for Energy Budget	Ratesetting	Ratesetting	YES
A02-04-032 OCMC, INC., ONE CALL COMMUNICATIONS, INC., for Authority to acquire assets of One Call Communications, Inc. (U 5226-C), pursuant to California Public Utilities Code Section 851	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3087 (5/2/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-04-033 PACIFIC GAS AND ELECTRIC COMPANY, for authorization under Public Utilities Code Section 851 to grant a Permanent Overhang Easement to Delta Energy Center, LLC for an Aerial Crossing of Pacific Gas and Electric Company Property by a Generation Tie Line.	Ratesetting	Ratesetting	NO
A02-04-034 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-M) for Approval of 2002 CARE Activities and Budget	Ratesetting	Ratesetting	YES
A02-04-035 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E) Regarding California Alternate Rates for Energy Program Funding for Program Year 2002	Ratesetting	Ratesetting	YES
A02-04-036 SOUTHERN CALIFORNIA GAS COMPANY, (U 904-G) for Approval of 2002 CARE Activities and Budget	Ratesetting	Ratesetting	YES
A02-04-037 CITY OF BAKERSFIELD, to construct Akers Road, a public Street, across the tracks of the Union Pacific Railroad Company (operated by the San Joaquin Valley Railroad) in the City of Bakersfield, County of Kern	Ratesetting	Ratesetting	NO
A02-04-038 CITY OF BAKERSFIELD, to construct Harris Road, a public Street, across the tracks of the Union Pacific Railroad Company (operated by the San Joaquin Valley Railroad) in the City of Bakersfield, County of Kern	Ratesetting	Ratesetting	NO
A02-04-039 CITY OF BAKERSFIELD, to construct Mountain Vista Drive, a public street, across the tracks of the Union Pacific Railroad Company (operated by the San Joaquin Valley Railroad) in the City of Bakersfield, County of Kern	Ratesetting	Ratesetting	NO
A02-04-040 CITY OF BAKERSFIELD, to construct Old River Road, a public street, across the tracks of the Union Pacific Railroad Company (operated by the San Joaquin Valley Railroad) in the City of Bakersfield, County of Kern	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3087 (5/2/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-04-041 TELENATIONAL COMMUNICATIONS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-04-042 NORTH BY NORTHEASTCOM LLC, for a Certificate of Public Convenience and Necessity to Provide Competitive Local Exchange, resold IntraLATA and InterLATA Telephone Service including Hi-Speed Data Service	Ratesetting	Ratesetting	NO
A02-04-044 PHILLIPS PETROLEUM COMPANY AND CONOCOPHILLIPS, joint application pursuant to Section 854(a) of the Public Utilities Code for expedited, Ex Parte authorization to transfer control of Union Pipeline Company (California) form Phillips Petroleum Company to ConocoPhillips	Ratesetting	Ratesetting	NO